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No. 2] NEW DELHI, SATURDAY, JANUARY 2, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 23rd December 1953

S.R.O. 56.—Whereas the elections of Shri Sheo Kumar Pande and Shri Sukhi Ram Bhartiya, as members of the Legislative Assembly of the State of Uttar Pradesh, from the Sirathu-cum-Manjhanpur constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Salig Ram Jaiswal, son of Shri Bisheshwar Prasad Jaiswal, 358, Muthiganj, Allahabad;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLABAHAD

PRESENT

Sri V. G. Oak, I.C.S.—*Chairman.*

Sri N. N. Mukerji—*Member.*

Sri Baburam Avasthi—*Member.*

ELECTION PETITION No. 316 of 1952

Sri Salig Ram Jaiswal—*Petitioner.*

versus

Sri Sheo Kumar Pande and 12 others—*Respondents.*

APPEARANCE

Counsel for the petitioner—

1. Sri R. N. Basu.
2. Sri N. N. Mukerji.
3. Sri Balram Lal Srivastava.

Counsel for respondent No. 1—

1. Sri Jagdish Swarup.
2. Sri Mahabir Prasad Shukla.
3. Sri Mufti Fakhrul Islam.
4. Sri Indar Singh.
5. Sri Mohd. Baqar Usmani.

Counsel for respondent No. 2—

1. Sri Gopalji Mehrotra.

JUDGMENT

This is an election petition by Sri Salig Ram Jaiswal challenging the election of Sri Sheo Kumar Pande respondent No. 1 and Sri Sukhi Ram Bhartiya respondent No. 2 to the Uttar Pradesh Legislative Assembly from Sirathu-cum-Manjhanpur constituency in Allahabad district. This was a double-member constituency. One of the two seats was reserved for a scheduled caste candidate. The petitioner and the 13 respondents were candidates for the said election. Sri Salig Ram Jaiswal, petitioner, and Srimati Sushila Devi, respondent No. 10, who was a scheduled caste candidate, were candidates set up by the Kisan Mazdoor Praja Party. Their symbols were a hut and a hut within a circle respectively. Sri Sheo Kumar Pande respondent No. 1 and Sri Sukhi Ram Bhartiya respondent No. 2, who was a scheduled caste candidate, were set up by the Congress party. Their symbols were two bullocks with yoke on, and two bullocks with yoke on within a circle respectively. It was declared on 9th February 1952 that respondents No. 1 and 2 had been elected for the two seats in this constituency.

According to the petitioner, the election of respondents No. 1 and 2 is void for various reasons, as given below. Counting of votes was not correctly done. As a matter of fact the petitioner secured a majority of valid votes. During the counting two boxes for respondent No. 1 were found missing. Later on, two boxes for respondent No. 1 were said to have been found out. But ballot papers of these boxes were mixed up with ballot papers of respondent No. 10. Votes were divided at random. Counting of votes was started without counting the number of ballot boxes of each candidate and without getting seals of boxes examined by Counting Agents. Counting of votes from eight different boxes was going on simultaneously at eight different tables. Ballot papers were found arranged serially in bundles. Ballot boxes could easily be opened without tampering with the seals placed on ballot boxes. Ballot papers found at the time of counting were less by 2000 than the ballot papers actually issued to voters used in the constituency. In many cases there were differences in the inner and outer symbols pasted on the ballot boxes. In many cases ballot boxes were without prescribed shellack seals. The prescribed paper seals were of pink colour. But paper seals of white colour were found pasted on a number of boxes. When counting of votes concluded on 9th February 1952, the Returning Officer gave out that the result of the election would be announced next day. But actually the Returning Officer declared the result of the election the same day (9th February 1952). One Sukhdeo Ram Yadav, who is an Inspector of Civil Supplies Department, canvassed for and helped respondents No. 1 and 2 in election. Respondents No. 1 and 2 did not show in their returns of expenses, the money spent by them in connection with meetings addressed by the Chief Minister of Uttar Pradesh. Finally, respondents No. 1 and 2 paid Rs. 100 and Rs. 50 respectively to the Congress Parliamentary Board for getting themselves nominated by the Congress for the election. These two sums were not shown by respondents No. 1 and 2 in their returns of election expenses. The petitioner, therefore, prayed that the election may be declared void in law. Further, the petitioner and respondent No. 10 may be declared as duly elected in the place of respondents No. 1 and 2.

Sri Sheo Kumar Pande respondent No. 1 is the main contesting respondent. He denied that there was any defect in the ballot boxes or any irregularity in the counting. He denied having paid Rs. 100 from his own pocket to the U.P. Congress Parliamentary Board. It was denied that Sri Sukhdeo Ram Yadav canvassed for or helped the respondent No. 1 in his election. It was denied that any money was spent by this respondent in the election meetings addressed by the Chief Minister. It was further pleaded that one Sri Ganga Prasad was a duly nominated candidate. The petitioner did not implead Sri Ganga Prasad in the election petition. So the petition is defective. The petition is vague, is not in proper form, and is in contravention of Section 81 of the Representation of People Act. So the petition is liable to be rejected.

Sri Sukhi Ram Bhartiya respondent No. 2 and Sri Ram Das respondent No. 9 filed separate written statements opposing the election petition. Sri Sukhi Ram Bhartiya raised practically the same pleas as raised by Sri Sheo Kumar Pande. Sri Sukhi Ram Bhartiya further urged that, the petitioner is not entitled to challenge the election of respondent No. 2, who was a scheduled cast candidate.

On these pleadings the following issues were framed:—

ISSUES

1. Is the election petition not in proper form? Is it in contravention of Section 81, R. P. Act? Is it liable to be rejected?

2. Was Sri Ganga Prasad a duly nominated candidate? Is he a necessary party to this election petition? If so, what is its effect?
3. Was the counting of votes irregular and defective as detailed in paragraphs (12), (13), (14), (16), (17), (20), (22), (23) and (24)? Was the result of the election materially affected? Is the petitioner entitled to a scrutiny and re-count of votes? If so, what is the correct number of votes secured by each party?
4. Were ballot boxes defective, as detailed in paragraphs 19, 26 and 27 of the petition? If so, was the result of the election materially affected?
5. Did Sri Sukhdeo Ram Yadav canvass for and help respondents No. 1 and 2 in the election?
6. Is the election petition vague and liable to be rejected?
7. Is the petitioner entitled to challenge the election of respondent No. 2 (a scheduled caste candidate)?
8. Were the returns of election expenses by respondents No. 1 and 2 incorrect as detailed in paragraphs (29) and (30) of the election petition? If so, what is the effect?
9. To what relief, if any, is the petitioner entitled?

FINDINGS

We decided issues No. 1 and 6 on 16th October 1952. We are attaching to this judgment a copy of our order, dated 16th October 1952 as Appendix "A". We decided issues No. 2 and 7 on 13th November 1952. A copy of the order, dated 13th November 1952 is being attached to this judgment as Appendix "B".

Issue No. 3.—The question raised under this issue is whether the counting of votes was irregular and defective for various reasons. The petitioner produced eight witnesses in order to show that, counting of votes was irregular and defective. Sri Radhey Shyam Pathak (P.W. 1) was counting agent for Sri Saligram Jaiswal, and is an interested witness. Shanker Dayal Sinha (P.W. 2) worked as a counting clerk. M. S. Ansari (P.W. 3) was placed in charge of one table during the counting of votes. Sri Nathu Ram (P.W. 4) was a candidate for the scheduled caste seat in this election. Formerly, he was in the Congress. He applied for Congress ticket during the General Election. He mentioned in his application that, he would not stand for election if he was not selected as Congress candidate. He failed to obtain the Congress ticket. He stood for election in spite of the undertaking given in his application to the Congress. Ram Ahakh Tewari (P.W. 5) worked as a counting clerk. Sri Ganga Narain Srivastava (P.W. 8) was a candidate for this election. He is a pleader. Ram Chandra Rajak (P.W. 10) was counting agent for Sri Nathu Ram candidate. P.W. 11 is Sri Saligram Jaiswal, petitioner.

Eleven witnesses were examined for the respondents in order to show that, boxes were in order, and counting of votes took place in a regular manner. Sri T. N. Prasad (D.W. 1) is the Sub-Divisional Magistrate of Sirathu-Manjhanpur. He was the Returning Officer for this constituency. Jai Gopal Misra (D.W. 3) worked as checking clerk during the counting. Sri Ram Das Gupta (D.W. 4) was a candidate for this election. Indrakant Tripathi (D.W. 6) is an Inspector in Rationing Office. Sri Bhatia (D.W. 7) is the Personal Assistant to the Inspector General of Registration. Sri Qasim (D.W. 8) is an Inspector of Stamps. S. N. Pande (D.W. 9) is a clerk in the Public Works Department. These last four witnesses were in charge of different tables during the counting of votes. Badri Prasad (D.W. 10) is a clerk, who worked as checking officer at one table. Sukhdeo Ram Yadav (D.W. 11) also took part in the counting. Srimati Madhuri Srivastava (D.W. 12) is a Deputy Collector. She assisted the Returning Officer in the counting of votes. She prepared forms No. 14. D.W. 17 is Sri Sheo Kumar Pande, respondent No. 1.

Issue No. 3 refers to a number of paragraphs of the election petition. It will be convenient to discuss the various allegations paragraph-wise.

Paragraph 13 of the petition.—The counting of votes in this Constituency started on the 5th of February, 1952, and finished on 9th February 1952. The allegations contained in paragraph 13 are that, two boxes were found missing, while votes for respondent No. 1 were being counted. But Shanker Dayal Sinha (P.W. 2) said that, the missing boxes related to Sri Salig Ram Jaiswal. Sri Nathu Ram (P.W. 4) stated that one box of Tara Chand Jain was missing. On 9th February 1952 Sri Radhey Shyam Pathak (P.W. 1) presented an application Ex. 1 to the Returning Officer that, on 8th February 1952 one ballot box was found with the symbol missing. The symbol for candidate No. 4 was noted inside the box. It

was ordered that, that box would be dealt with later. The Returning Officer dismissed the application Ex. 1 on the ground that, the applicant had not given the number of the polling station. Sri Ram Das Gupta (D.W. 4) admitted, there was a complaint about a missing box. He said that the box related to Chand. It is thus proved that one box was missing at some stage during the counting. But the specific charge made in paragraph 13 of the petition has not been proved.

Paragraph 14 of the petition, wherein it was alleged that on one table ballot papers of respondents No. 1 and 10 were mixed up and were divided at random. We do not find any evidence in support of the allegations contained in paragraph 14 of the petition.

Paragraph 16 of the petition.—There are two separate allegations in paragraph 16. The first charge is that, counting of votes was started without counting the number of the ballot boxes of each candidate. On this point the Returning Officer Sri T. N. Prasad (D.W. 1) said that, before starting the counting, he satisfied himself that all the boxes had been received. He further stated that he arranged the boxes, which had been stored in his court room, on the 30th and 31st of January and on the 1st of February. It took about 15 hours to arrange the boxes during those three days. The boxes were arranged booth-wise separating boxes for the Assembly from the boxes for Parliament candidate-wise. In this election there were 11 candidates, for whom votes were cast. There were 147 ballot boxes for each candidate. Thus there were about 1500 ballot boxes used for this particular election. The work of arranging these 1500 boxes was no doubt laborious. But we doubt if this work should have taken as much as 15 hours.

Rule 46 of R. P. Rules 1951 deals with the procedure to be followed at the counting of votes. Rule 46(1) runs thus: On the date and at the time and place appointed under Rule 44, the Returning Officer shall, before he commences to count the votes, read the provisions of Section 128 to such persons as may be present. He shall then with respect to ballot boxes used at the poll proceed as follows: (1) All the ballot boxes placed for the counting of votes shall be counted and checked. This rule requires that all the ballot boxes have to be counted and checked on the date and at the place fixed for the counting of votes. Sri Jagdish Swarup appearing for respondent No. 1 contended that, the rule merely requires that only those boxes which are taken out of the Store Room at one time and brought to the Returning Officer's table have to be counted and checked. We do not agree. The Returning Officer should not start counting of votes until all the ballot boxes have been counted and checked. That work will not doubt take some time. But the Returning Officer has to devote the necessary time for counting and checking of boxes on the date and at the place fixed for counting. In the present case Sri T. N. Prasad checked and arranged the boxes on certain days before the date fixed for counting. The counting agents had no opportunity to watch Sri T. N. Prasad's proceedings, while he was arranging the boxes on the 30th and 31st of January and the 1st of February. Counting and checking of boxes were not done as laid down in Rule 46(1), R. P. Rules, 1951.

The second charge in paragraph 16 of the petition is that, counting was started without getting the seals of ballot boxes examined by the counting agents of the candidates to find out whether the seals were intact. Sri Radhey Shyam Pathak (P.W. 1) said that the Returning Officer did not permit counting agent's to enter the room, in which ballot boxes were stored. In his application Ex. 1 Sri Radhey Shyam did not complain that, his movements in the counting hall were unnecessarily restricted. Sri Ganga Narain Srivastava (P.W. 8) admitted that he used to go about freely at the place of counting, and the Returning Officer was easily accessible to all candidates. The Returning Officer (D.W. 1) stated that he gave candidates and counting agents all facilities to examine seals. No written application was moved before the Returning Officer on this point. We, therefore, think that candidates and counting agents had reasonable opportunity to examine seals of ballot boxes at the place of counting.

Paragraph 17 of the petition.—The petitioner's grievance is that, counting of votes was being done at eight tables simultaneously. No doubt under the rules counting of votes for one candidate should not be taken up until counting of votes for the previous candidate is finished. But there appears to be no objection for simultaneous counting of votes from different boxes for the same candidate. Simultaneous counting at different tables is admitted. But such counting was not against rules.

Paragraph 20 of the petition.—It has not been shown that the ballot papers found during the counting were less in number than the ballot papers used in the constituency.

paragraphs 22, 23 and 24 of the petition.—The complaint in these three paragraphs is that, on certain boxes there was difference between the inner and outer symbols pasted on the boxes. The Returning Officer ruled that the outer symbol would be the governing factor. The result was that, votes polled for the petitioner were credited to respondent No. 1, while votes polled for respondent No. 1 were credited to the account of the petitioner. This caused a net loss to the petitioner.

Sri Radhey Shyam Pathak (P.W. 1) stated that there was such confusion of labels for boxes relating to Sipah, Osa, Nagreha and Rakswara polling stations. The petitioner's contention is that, originally the outer and inner symbols tallied. But subsequently outer symbols were exchanged in order to give an advantage to respondent No. 1. The respondent's contention is that, the difference between inner and outer symbols was accidental: and electors cast their votes in accordance with the outer symbols. Sri Radhey Shyam Pathak admitted that ballot boxes relating to Osa, Nagreha, Sipah and Rakswara were not counted near his table. He heard about these defects from others. Sri Nathu Ram (P.W. 4) stated that there was some confusion between the inner and outer symbols with respect to boxes from Rakswara, Osa, Nagreha and Sipah polling stations. He has probably a grievance against the Congress for not giving him the Congress ticket for election. Sri Ganga Narain Srivastava (P.W. 8) stated that there was difference between the outer and inner symbols for one box of polling station Sipah. Details of such differences in outer and inner symbols were given by Ram Chandra Rajak (P.W. 10). He was counting agent for Sri Nathu Ram, and polling agent for Sri Salig Ram Jaiswal, petitioner. According to Ram Chandra Rajak, for one set of ballot boxes from polling station Osa, where the inner and outer symbols differed, 62 votes were credited to the petitioner, and 128 votes were credited to respondent No. 1. For one set of ballot boxes from polling station Rakswara, 101 votes were credited to the petitioner, and 182 votes were credited to the respondent No. 1. For a set of ballot boxes from polling station Nagreha, 138 votes were credited to the petitioner's account, while 243 votes were credited to the account of respondent No. 1. For these three pairs of boxes, 301 votes were credited to the petitioner, while 553 votes were credited to respondent No. 1. For these three sets of boxes respondent No. 1 was given 252 votes more than the votes credited to the petitioner. **This was done on the basis of outer symbols.** If counting were to be done on the basis of inner symbols, the votes would have to be reversed. That is to say, 553 votes would have to be credited to the petitioner, while only 301 votes would be credited to respondent No. 1. According to the Returning Officer's figures, the petitioner obtained 17,528 votes, while respondent No. 1 obtained 17,758 votes. Respondent No. 1 was declared to have been elected with a margin of 232 votes. If the votes for three sets of boxes from polling stations, Osa, Rakswara and Nagreha were to be reversed as suggested by Ram Chandra Rajak, the petitioner's votes would have to be increased by 252, and votes credited to respondent No. 1 would have to be reduced by 252 votes. That would give a majority of votes to the petitioner. If the figures given by Ram Chandra Rajak were accepted, and if we accept the petitioner's theory that the outer symbols were changed after the poll in order to give advantage to respondent No. 1, the result of the poll would go in petitioner's favour. But Ram Chandra Rajak is an interested witness. It was possible for him to take down notes from Form No. 14, and quote the figures before the Tribunal. One cannot, therefore, place much reliance upon Ram Chandra Rajak's deposition.

The Returning Officer (D.W. 1) admitted that in two cases there were differences between inner and outer symbols. In one case the outer symbol was for candidate No. 3 (the petitioner), while the inner symbol was for candidate No. 11 (Smt. Sushila Devi). In another case, the outer symbol was for candidate No. 11 (Smt. Sushila Devi), while the inner symbol was for candidate No. 10 (respondent No. 1). Thus according to the Returning Officer, there was no instance of exchange of symbols as between the petitioner and respondent No. 1. Several officials, who took part in counting and who have appeared as defence witnesses, stated that no case of a difference between inner and outer symbols came to their notice. These statements of the defence witnesses appear surprising, in view of the Returning Officer's admission that there were two such instances of differences between inner and outer symbols. Sri Ram Das Gupta (D.W. 4) also admits one such instance. He made a written application Ex. B in that connection. It was stated in the application Ex. B that, for one box there was no outer symbol, and the inner symbol was for candidate No. 10 (respondent No. 1). With respect to the same box (polling station No. 45 Rakswara—booth No. 1) Sri Sukhi Ram Bhartiya moved a separate application Ex. 12 before the Returning Officer. In this application Ex. 12 it was suggested that, the box credited to Sri Sheo Kumar Pande should be credited to Smt. Sushila Devi, and the box credited to Smt. Sushila Devi should be credited to the account of Sri Sheo Kumar Pande. From Form No. 14 we find that, 26 votes were credited to the account of Sri Sheo Kumar Pande, for booth

No. 1 of polling station No. 45, while 177 votes were credited to the ac Smt. Sushila Devi for the corresponding box for the same booth of polling station Rakswara. This application Ex. 12 was written by Sri Sheo Kumar Pande respondent No. 1 on behalf of Sri Sukhi Ram Bhartiya respondent No. 2. The Returning Officer disallowed the application Ex. 12. Had the Returning Officer allowed the application Ex. 12 written by respondent No. 1, Sri Sheo Kumar Pande would have got an advantage of 151 votes. Respondents produced Sri Shambhu Nath Upadhyaya (D.W. 15) to show how the difference between inner and outer symbols is to be accounted for. Such defect was noticed with respect to polling station Rakswara. Sri Upadhyaya was Presiding Officer at Polling station Rakswara. So the Returning Officer called for his explanation. Sri Upadhyaya submitted his explanation Ex. F. In this explanation Sri Upadhyaya suggested that, wrong labels might have been pasted on some boxes due to insufficient light at the time of pasting these symbols. But the outer symbols were properly pasted. Electors voted in accordance with outer symbols. Sri Upadhyaya admitted that, such differences between inner and outer symbols were possible for one or two boxes only. According to the petitioner, such differences were noticed in the case of a large number of boxes.

It is proved that in some boxes there were differences between inner and outer symbols. But it has not been proved that there was an organised exchange of outer labels of the petitioner and respondent No. 1. Any way, in our opinion, it would have been much better if the Returning Officer had ordered a repoll at these polling stations.

Paragraph 12 of the petition, wherein it was asserted that votes were not correctly counted and in fact the petitioner secured a majority of valid votes. According to Sri T. N. Prasad, Returning Officer, counting was properly done. Form No. 14 was prepared by Srimati Madhuri Srivastava (D.W. 12). Counting Officers used to bring check slips along with ballot papers to her. She used to fill up forms No. 14 from the figures noted in the check slips. She thinks that she made the totals in Form No. 14, correctly. After making the totals, she handed over these forms to the Returning Officer for checking the totals. Srimati Srivastava pointed out before the Tribunal that, in their present condition Forms No. 14 for different candidates contain 22 alterations, which were not made by her. There are four such unauthorised alterations in Form No. 14 for the petitioner, and thirteen unauthorised alterations in Form No. 14 for respondent No. 1. Small paper slips have been pasted at a number of places on Forms No. 14. At places figures have been rubbed away and re-written. Srimati Srivastava thinks that these unauthorised alterations were not made by the Returning Officer. In spite of these alterations in Forms No. 14, there has been no substantial change in the figures originally written by Srimati Srivastava. The totals for different candidates have remained unaltered. One packet Ex. E, containing ballot papers for the petitioner for booth No. 2 of polling station No. 9 (Kaini) was examined during Srimati Srivastava's cross-examination. We found 6 ballot papers in this packet. The figure noted in Form No. 14 is also 6. But the figures noted in the check slip are: " $53 + A/53 = 106$ ". Srimati Srivastava thinks that, the original entry in the check slip was " $3 + A/3 = 6$ ". Somebody has now altered that entry.

Sri R. N. Basu appearing for the petitioner drew our attention to similar discrepancies in certain other packets. Sri M. P. Shukla, appearing for respondents objected that, these packets should not be used in evidence, as the petitioner never tendered these packets in evidence. There is no force in this contention. Ballot paper used in this election and other records were summoned by this Tribunal from the Returning Officer in September 1952. To the knowledge of respondents, the petitioner devoted several days in inspecting the ballot papers and other records. Respondents could well expect that, the petitioner might make use of these ballot papers and other records. The petitioner was entitled to compare the contents of packets of ballot papers with the entries in Form No. 14 in order to show that, counting was not correctly done. Five packets of Ballot papers examined by us during the course of arguments have been marked as Exs. 13 to 17.

Ex. 17 is the packet containing ballot papers for Sri Sheo Kumar Pande for booth No. 1 of polling station No. 14 (Bhaduan). We found 35 ballot papers in this packet. The figure 35 has been noted in the check slip also. But the corresponding figure noted in Form No. 14 is 335. There is some over-writing in the first '3' of the figure '335'. Thus we find that the figure noted in Form No. 14 exceeds the number of ballot papers in the packet by 300.

Ex. 13 is the corresponding packet for Sri Salig Ram Jaiswal (booth No. 1 of polling station No. 14—Bhaduan). In this packet Ex. 13 we found 153 ballot papers divided into two bundles of 100 and 53 ballot papers. But the figure noted

the check slip is: "184+153=337". The corresponding figure noted in Form No. 15 is 37. Thus the figures noted in Form No. 14 and the check slip and the actual number of ballot papers in the packet are all different. The figure noted in Form No. 14 is less than the actual number of ballot papers in the packet by 118.

Ex. 16 is the packet for Sri Sheo Kumar Pande for booth No. 2 of polling station No. 9 (Kaini). We found 84 ballot papers in this packet. The figure '84' is noted on the check slip also. But the figure given in Form No. 14 is 184. Thus the figure noted in Form No. 14 exceeds the actual number of ballot papers by 100.

Thus we find that there is a total excess of 400 votes noted in Form No. 14 in the name of respondent No. 1 with respect to booth No. 1 of polling station No. 14 and booth No. 2 of polling station No. 9. If the entries of Form No. 14 are to be brought in a line with the actual number of ballot papers, the grand total of votes in favour of Sri Sheo Kumar Pande will have to be reduced by 400. On the other hand, the grand total of the petitioner as noted in Form No. 14 will have to be increased by 118. That would bring about a difference of 518 votes in favour of the petitioner and against respondent No. 1. We have already mentioned that, on the calculation of the Returning Officer, respondent No. 1 won the election by a majority of 232 votes, only. Thus the alterations in the two totals as indicated above would give the petitioner a majority of votes.

According to the petitioner, the incorrect entries and unauthorised alterations in Form No. 14 were made during the process of counting. On the other hand Sri Jagdish Swarup appearing for respondent No. 1 argued, that all the entries were properly made upto the stage of declaration of the result on 9th February 1952. He contended that the election records were tampered with at the instance of the petitioner after the ballot papers and other records came to the custody of the Election Tribunal. It was pointed out that the petitioner's worker Phool Lal applied for inspection of election records in February 1952. But he made no complaint about interpolations in Form No. 14. Under Rule 52(1) R.P. Rules, 1951, the packets of ballot papers could not have been inspected after 9th February 1952 without an order of a competent court or this Tribunal. There was, therefore, little opportunity for tampering with packets of ballot papers after 9th February 1952. We took all possible precautions for safe custody of the ballot papers and election records, when they reached the custody of this Tribunal, in September 1952. It was, therefore, very difficult to tamper with these materials after September 1952. It appears more probable that there was tampering with the election records, while they were still in the custody of the Returning Officer. In view of the large number of unauthorised alterations made in Form No. 14 and discrepancies in the number of ballot papers contained in different packets, the figures noted in the check slips and the figures noted in the Forms No. 14, it must be held that counting of votes was not correctly done.

The next question for consideration is whether the petitioner has secured a majority of valid votes. The Forms No. 14 were written up by a responsible officer. If the totals given in Forms No. 14 are accepted, respondent No. 1 would appear to have obtained a majority of votes. On the other hand figures in Form No. 14 were copied out from figures noted in check slips. Figures in check slips were written from the number of ballot papers found in ballot boxes. The actual number of ballot papers is the ultimate basis for deciding the result of an election. If we accept that the packets Exs. 13, 16 and 17 are in their original condition, the petitioner would appear to have received the majority of votes. Since we cannot be sure at what particular stage tampering took place, it cannot be said with certainty that either the petitioner or respondent No. 1 secured the majority of votes. The matter must be referred to the Electorate for a fresh verdict.

The second part of issue No. 3 is: "Was the result of the election materially affected?" We have shown above that there was irregularity in counting and checking of ballot boxes at the commencement of the counting. But this irregularity does not appear to have materially affected the result of the election. Again, there were differences in inner and outer symbols for certain ballot boxes. But we do not definitely know the origin of these differences between the outer and inner symbols. It has not definitely been shown that, any such difference between outer and inner symbols worked out to the disadvantage of the petitioner. The petitioner has not succeeded in proving that, the differences between inner and outer labels of certain boxes affected the result of the election materially.

But the defect in actual counting was far more serious. We have shown above that, there is some ground for believing that actually the petitioner might have received majority of votes, if counting had been done properly. We, therefore, hold that the defective counting votes affected the result of the election materially, as regards the election of respondent No. 1.

It is admitted in the petition that, Sri Sukhi Ram Bhartiya, respondent 8 obtained 17,521 votes, while Smt. Sushila Devi, respondent No. 10 received 11,577 votes. Thus respondent No. 2 won the election by a margin of 5,944 votes. The petitioner did not point out any serious defects as regards the contest between respondents Nos. 2 and 10. The irregularities noticed above were not likely to wipe out the majority of nearly 6,000 votes in favour of respondent No. 2. We, therefore, hold that the result of the election was not materially affected as regards respondent No. 2.

The last part of issue No. 3 is: "Is the petitioner entitled to scrutiny and re-count of votes? If so, what is the correct number of votes secured by each party?" At the time of framing of issues, the petitioner pressed for scrutiny and re-count of votes. The respondents then opposed the petitioner's claim for scrutiny and re-count of votes. During the final arguments Sri R. N. Basu, appearing for the petitioner, did not press for scrutiny and re-count of votes. On the other hand, Sri M. P. Shukla, appearing for respondents, suggested a scrutiny and re-count of votes. Had there been a reasonable chance of finding out, with some accuracy, whether the petitioner or the respondent No. 1 actually obtained the majority of votes, we would have agreed to a re-count of votes for all the packets of these two candidates. But we have pointed out that, there were serious defects in the counting. Had there been a mere clerical error in counting, such error could be corrected by a re-count. But in the present case we are dealing with fraud and not accidental errors. A re-count will not reveal whether the petitioner or respondent No. 1 actually obtained the majority of votes. We, therefore, hold that the petitioner is not entitled to a scrutiny and re-count of votes, and it is not possible to give the correct number of votes secured by the petitioner and the respondent No. 1.

Issue No. 4.—The question is whether ballot boxes were defective as alleged in paragraphs 19, 26 and 27 of the petition.

Paragraph 19 of the petition.—It is alleged by the petitioner that, the ballot boxes could easily be opened without tampering with the seals put on the ballot boxes. Shanker Dayal Sinha (P.W. 2) stated that a ballot box could be opened without breaking the seal of the pink paper. The most important witness for the petitioner on this point is Jai Singh (P.W. 9). He gave before the Tribunal two demonstrations for opening a ballot box without breaking the seal. In the first demonstration, the shellac seal was placed on the knot of the thread. Jai Singh admitted that he could not open the ballot box in that condition without breaking the shellac seal. Jai Singh however, opened the box without damaging the paper seal, after breaking the shellac seal. In the second demonstration, the shellac seal was fixed at a distance of two and a half inches from the knot of the thread. Jai Singh, with the help of two needles, succeeded in opening the box in five minutes with the seals intact. Jai Singh admitted that he would not be able to open the box, if the distance of the seal from the knot is less than two-and-a-half inches.

In view of the demonstrations given by Jai Singh witness, the respondents led evidence to show that there were instructions during the election for fixing the seal as close to the knot as possible. Sri Laghate (D.W. 14) is the present District Election Officer. He said that the rule was to fix the shellac seal as close to the knot as possible. Sri Laghate did not inspect the ballot boxes used in Sirathu-Majhanpur constituency after they had been sealed. No written instructions were issued prescribing the distance between the seal and the knot. Ballot boxes used in this district were "Godrej" boxes. Ex. 10 are instructions issued by the manufacturers of these boxes. In instruction No. 6 of Ex. 10 it is laid down: "affix Presiding Officer's seal on the loose ends of the thread without covering up the knot". This instruction contained in Ex. 10 does not support Sri Laghate's statement that, the rule was to fix the shellac seal as close to the knot as possible. Since there were no written instructions for placing the seal as close to the knot as possible, seals fixed on a number of ballot boxes must have been at some distance from the knot. If this distance was two-and-a-half inches or more, it was possible to open the ballot box without breaking the seal as demonstrated by Jai Singh (P.W. 9). But the task was not easy. It required some skill to open the ballot box without breaking the seals. Sri Laghate stated that in the bye-election of May, 1953 the ballot boxes had no cords under the lids. It appears that authorities realised that, it was not safe to have cords under the lids as was done in the General Elections of January 1952. We, therefore, hold that if there was a big gap between the shellac seal and the knot of the thread, it was possible to open the ballot box without tampering the shellac seal. But the task was difficult. We do not think that, the fact that a person possessing special mechanical

skim could open ballot boxes under certain circumstances can be considered as a serious defect in the polling arrangements. It was not alleged in the petition, and the petitioner has not produced any direct evidence to prove that any ballot box was actually tampered with between the date of polling and the date of commencement of counting as demonstrated before us by Jai Singh.

Paragraph 26 of the petition.—It is alleged that, shellac seals of all the ballot boxes were not on the ballot boxes, when they were brought to the counting tables. The Returning Officer stated that he found all the seals intact. The charge that shellac seals were missing from some ballot boxes is not established.

The second complaint under paragraph 26 is that, the persons counting the votes only opened the paper seals on the ballot boxes. This has been admitted by respondents's witnesses. The practice was to open the shellac seals at the table of the Returning Officer, and then to pass on the ballot box to a counting table where the paper seal was opened.

Paragraph 27 of the petition.—It is alleged that the official paper seals were of pink colour, but several ballot boxes carried white paper seals. Sri Radhey Shyam Pathak P.W. 1 said that, one or two ballot boxes had seals of ordinary white paper. He has filed a white label Ex. 2. He stated that when ballot boxes were being opened for counting votes, the paper labels were thrown away. He picked up the label Ex. 2 from there. Sri Radhey Shyam Pathak is an interested witness. The petitioner's evidence to the effect that certain boxes carried seals of white paper is not satisfactory.

It has been found that under certain circumstances a sealed ballot box could be opened without tampering with the shellac seal. Further, the shellac seal and the paper seal were broken at different places during the counting. But neither of these two factors affected the result of the election materially.

Issue No. 5.—The petitioner produced four witnesses for proving that Sukhdeo Ram Yadav canvassed for and helped respondents No. 1 and 2 in the election. Sri Nathu Ram (P.W. 4) stated that during the counting Sukhdeo Ram Yadav said that the Congress would win. If Sri Nathu Ram's statement on this point is true, the remark made by Sukhdeo Ram Yadav during the counting was improper. But observations made during the counting about chances of success of a certain candidate do not amount to canvassing. Syed Asad Ullah Kazmi (P.W. 6) was an honorary magistrate from 1948 to 1950. At present he is a member of the District Board. He stated that he found Sukhdeo Ram Yadav canvassing for Sri Sheo Kumar Pande at Nai Bazar. The witness admitted that he was in charge of the election of Sri Saligram in Sirathu circle. Syed Asad Ullah is an interested witness. He did not know Sukhdeo Ram Yadav before he was seen at Nai Bazar on the day in question. Syed Asad Ullah did not make any report against Sukhdeo Ram Yadav to his officers. Syed Asad Ullah is a resident of village Kara. Beni Prasad Sharma (P.W. 7) is a resident of Sarai Aqil. He stated that he found Sukhdeo Ram Yadav canvassing at Sarai Aqil and Manjhanpur. Beni Prasad admitted that he was also in charge of election work for Sri Saligram, Jalswal. The witness canvassed for him. Beni Prasad also is an interested witness. He did not complain to Sukhdeo Ram Yadav's senior officer. The petitioner (P.W. 11) has no personal knowledge about the alleged canvassing by Sukhdeo Ram Yadav. The petitioner heard about it from his workers. The petitioner stated that he telephoned to the Town Rationing Officer about Sukhdeo Ram Yadav's misconduct. But the petitioner did not make any written application against the inspector.

P.W. 11 is Sukhdeo Ram Yadav. He denied having canvassed for the Congress. He said that he was never an Inspector for Sirathu Manjhanpur circle. His circle Sarai Aqil was however, on the border of the Sirathu Manjhanpur constituency. He admitted that he had orders in those days not to visit villages. He obtained leave for 10 days during December 1951, when the election campaign was in full swing. The facts that the Inspector's circle adjoined Sirathu Manjhanpur constituency, and he took leave when canvassing was going on, are significant.

The statements of Syed Asad Ullah and Beni Prasad Sharma raise strong suspicion against Sukhdeo Ram Yadav. But no written complaint was made by the petitioner or his workers against Sukhdeo Ram Yadav during the election period. The petitioner's evidence to the effect that Sukhdeo Ram Yadav canvassed for or helped respondents No. 1 and 2 in the election is not convincing.

Issue No. 8.—This issue deals with the alleged omission to show certain expenditure in the returns of election expenses. Paragraph 29 of the petition deals with meetings addressed by the Chief Minister. The petitioner (P.W. 11) stated that there was a Congress meeting at Chamandah. The Chief Minister addressed that meeting, and advised the audience to vote for Sri Sheo Kumar Pande and Sri Sukhi Ram Bharti. The petitioner, however, admitted that he was not present

in the meeting. The petitioner did not produce any evidence to show that respondent No. 1 or respondent No. 2, incurred any expenditure in connection with the election meeting addressed by the Chief Minister. Sri Sheo Kumar Pande (P.W. 17) stated that he incurred no expenses in connection with that meeting. Sri Sukhi Ram Bhartiya also did not incur any expenses for that meeting. Since it has not been shown that either respondent No. 1 or respondent No. 2 incurred any expenditure in connection with the meeting in question, the question of omitting such expenditure from the returns of election expenses does not arise.

In paragraph 30 of the petition it is stated that, respondents No. 1 and 2 paid to the Congress Parliamentary Board Rs. 100/- and Rs. 50/- respectively for being nominated by the Congress. Respondent No. 1 in his written statement pleaded that he did not deposit the amount of Rs. 100/- from his own pocket. The implication is that, somebody also paid Rs. 100/- on behalf of respondent No. 1. The petitioner did not adduce evidence to show that respondent No. 1 spent Rs. 100/- from his own pocket. Since expenditure of Rs. 100/- by respondent No. 1 has not been proved by the petitioner, the question of omission of this item from Sri Sheo Kumar's return of election expenses does not arise.

Respondent No. 2 admitted having deposited Rs. 50/- with the U.P. Congress Parliamentary Board as alleged by the petitioner. But Sri Sukhi Ram Bhartiya's plea is that, that expenditure cannot be regarded as election expenses.

Chapter VIII appearing in Part V of R.P. Act 1951 deals with election expenses. The expression "election expenses" has not been defined in the Act. It is, therefore, rather difficult to say whether expenditure incurred before the date of nomination should be regarded as election expenses. The term 'candidate' has been defined in Section 79 of the Act "Candidate means a person who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when with the election in prospect, he began to hold himself out as a prospective candidate." This definition appears in part VI of the Act. It is made clear in section 79 that this is the definition of the term 'candidate' for purposes of Parts VI, VII and VIII of the Act. So this definition does not in terms apply to election expenses dealt with in Chapter VIII (Part V) of the Act. But the definition of the term candidate appearing in Section 79 can be taken as a guidance for determining the scope of the expression "election expenses". The respondent No. 2 paid the U.P. Congress Parliamentary Board the sum of Rs. 50/- in order to secure Congress ticket. The Congress is a well established political party. Sri Sukhi Ram Bhartiya must have paid the sum of Rs. 50/- hoping that, nomination on behalf of the Congress party would improve his chances of success in the election. He paid the amount of Rs. 50/- with the definite object of getting elected in the General Election. So, although the expenditure was incurred before the date of nomination we consider that the expenditure amounts to election expenses as contemplated by Chapter VIII of R.P. Act, 1951. Respondent No. 2 should have shown in his return of election expenses the expenditure of Rs. 50/- under section 76 R.P. Act, 1951.

Now, we have to consider whether the omission of respondent No. 2 to mention the item of Rs. 50/- in his return of election expenses amounts to a minor corrupt practice under sub-section (4) of Section 124 R.P. Act 1951. Section 124(4) is: "The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return." We have shown that the expenditure of Rs. 50/- ought to have been shown in the return of election expenses. This is, however, not the same thing as saying that, respondent No. 2 is guilty of making a false return of election expenses. The charge under consideration is that of a minor corrupt practice. In 'Rajendra Singh versus Swarup Singh' (The Gazette of India No. 170 dated 30th June 1953 page 2191) the election Tribunal, Jullundhar pointed out that it is a well settled proposition of law that there can be no corrupt practice without a corrupt motive. Sri Sukhi Ram Bhartiya did not enter the witness box to explain why he did not show the item of Rs. 50/- in his return of election expenses. But it was for the petitioner to establish that, the respondent had a corrupt motive. The respondent need not prove his good faith. Sri R. N. Basu appearing for the petitioner conceded that the total expenditure of respondent No. 2 was far below the maximum fixed under R.P. Act 1951 and R.P. Rules 1951. There was, therefore, not much point in Sri Sukhi Ram Bhartiya's omitting this item of Rs. 50/- from his return of election expenses. Different Election Tribunals in India have given conflicting decisions on the question whether it is necessary to show such expenditure in the return of election expenses. The expenditure was incurred before the date of nomination. It appears that respondent No. 2 believed that it was not necessary to show such expenditure in the return of election expenses. We are of opinion that respondent No. 2 was mistaken in this view. But we do not think that respondent No. 2 acted with a corrupt motive. Sri Sukhi Ram Bhartiya's omission to show the expenditure of Rs. 50/- in his return of Election expenses does not amount to a minor corrupt practice under section 124(4) of the Act.

ssue No 9.—The prayer at the foot of the election petition is in these terms: "1. That the election to the U.P. Legislative Assembly from Sirathu cum Manjhanpur Constituency may be declared a nullity or void in law; 2. that the petitioner and the opposite party No. 10 may be declared as duly elected in the place of opposite parties Nos. 1 and 2 respectively. The prayer contains two separate reliefs. Sri Jagdish Swarup contended that in an election petition a petitioner cannot claim two reliefs jointly or in the alternative. This plea was not taken in the written statements. But we allowed Sri Jagdish Swarup to argue the point, as it raises a pure question of law.

In paragraph 48 of the written statements of respondents Nos. 1 and 2 it was pleaded that reliefs No. 1 and 2 asked for in the prayer are totally inconsistent with each other and cannot be granted. This contention appears to be correct. Under relief (1) the petitioner prayed for a declaration that the election is a nullity or void in law. Under relief (2) the petitioner prayed for a declaration that the petitioner and respondent No. 10 have been duly elected. Now if the election was a nullity, no candidate can be declared elected as a result of such void election. It is not possible to grant the petitioner both the reliefs contained in the prayer. Although the two reliefs are not separated by the word "or", we may regard the prayer as containing two reliefs in the alternative.

Sri Jagdish Swarup argued that R. P. Act 1951 does not permit a petitioner to ask for reliefs in the alternative. These reliefs have been enumerated in Section 84 of the Act. It is laid down in Section 84 that a petitioner may claim any one of these reliefs. It is not mentioned in Section 84 that a petitioner may claim two reliefs in the alternative. But we consider that a petitioner has inherent right to claim two reliefs in the alternative. It is often difficult for a petitioner to be sure in advance whether he would be able to establish a particular case before the Election Tribunal. So, to be on the safe side, he may claim two reliefs, in the alternative.

The petitioner proved a few minor irregularities during the counting of votes. But the minor irregularities did not affect the result of the election materially. The petitioner has further proved that counting of votes was not correctly done. This defect was serious.

Section 100 R. P. Act 1951 enumerates grounds for declaring election to be void. Section 100 contains three sub-sections. Under sub-section (1) of Section 100 the Tribunal has to declare the election to be wholly void, if the petitioner is able to establish one or more of the three conditions enumerated in sub-section (1). In the present case the petitioner has not established any condition mentioned in clauses (a), (b) and (c) of sub-section (1). So the election cannot be declared to be wholly void.

Under sub-section (2) of Section 100, the Tribunal has to declare the election of the returned candidate to be void, if the petitioner establishes anyone or more of the conditions described in clauses (a), (b) and (c) of sub-section (2). Clauses (a) and (b) of sub-section (2) deal with corrupt and illegal practices. In the present case no corrupt or illegal practice has been proved against any respondent. Clause (c) of sub-section (2) of section 100 is: "that the result of the election has been materially affected.....by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.....or by any mistake in the use of any prescribed form." In order to arrive at the true result of an election, votes of rival candidates must be counted correctly. R. P. Rules 1951 have been framed by the competent authority as authorised under R. P. Act 1951. Rule 46 of R. P. Rules 1951 prescribes the detailed procedure to be followed at the counting of votes. It is mentioned in rule 46 that, "the Returning Officer shall then count or cause to be counted the valid votes given to each candidate and shall record in the statement in form No. 14 the total number of votes so given to each candidate." This direction makes it obligatory that votes of rival candidates should be counted correctly, and that the votes so counted should be noted down in form No. 14 correctly. This was not done in the present case. There was a good deal of confusion and fraud in the counting of votes and in preparing form No. 14. These mistakes committed in the counting of votes and in preparing form No. 14 affected the result of the election materially, as regards respondent No. 1. The case falls under clause (c) of sub-section (2) of Section 100 R. P. Act 1951. So the election of respondent No. 1 must be declared to be void.

Section 101 deals with grounds for which a candidate other than the returned candidate may be declared to have been elected. The Tribunal can declare the petitioner as duly elected only if it is satisfied that the petitioner actually secured the majority of valid votes or that the petitioner would have obtained a majority

of valid votes, but for malpractices committed by the returned candidate are not so satisfied in the present case. Although we are setting aside the election of respondent No. 1, it is not certain that the petitioner secured the majority of valid votes. So we are unable to grant the petitioner a declaration that he was duly elected. There must be fresh election for the general seat of this Constituency.

Now we proceed to consider the petitioner's case against respondent No. 2. No corrupt or illegal practice has been proved against respondent No. 2. It is true that there was serious irregularity in the counting of votes of the petitioner and respondent No. 1. But this irregularity had very little (if any) effect, as regards the counting of votes of respondents Nos. 2 and 10, who were Scheduled Caste candidates. Respondent No. 2 won the election by a comfortable majority. The petitioner has not been able to show that the irregularities committed in the counting of votes were likely to disturb Sri Sukhi Ram's majority of nearly 6,000 votes. Since the result of the election of respondent No. 2 was not materially affected by the irregularities in counting, Sri Sukhi Ram's election should stand.

Sri Gopal Ji Mehrotra appearing for respondent No. 2 argued that the result of our finding on issue No. 7 is that, either the election of both respondents Nos. 1 and 2, should be upheld, or the election of both these respondents should be set aside. We do not think that, our finding on issue No. 7 has such consequence. Issue No. 7 was whether the petitioner is entitled to challenge the election of respondent No. 2, who is a Scheduled Caste candidate. We held that the petitioner is entitled to challenge the election of respondent No. 2. But there is nothing in our order dated 13th November 1952 making it necessary to set aside the election of respondent No. 2, simply because we are setting aside the election of respondent No. 1. Had the election been wholly void the election of respondent No. 2 also would have been void. But we have shown that the present case does not fall under sub-section (1) of Section 100 R. P. Act 1951 and the election was not wholly void. There should, therefore, be no difficulty in declaring that, the election of respondent No. 2 is valid, but the election of respondent No. 1 is void.

Since the petition has succeeded as against respondent No. 1 he should be ordered to pay the petitioner's costs, which we assess at Rs. 1,000. It is true that the petition is being dismissed as against respondent No. 2. But we have found that Sri Sukhi Ram Bhartiya was wrong in omitting the item of Rs. 50 from his return of election expenses. In these circumstances respondent No. 2 may be ordered to bear his own costs.

ORDER

The election petition is partly allowed. Under section 98 read with Section 100 (2) (c), R. P. Act, 1951 we declare the election of Sri Sheo Kumar Pande respondent No. 1 for the general seat in Sirathu-Manjhanpur Constituency in January and February, 1952 to be void. The election of Sri Sukhi Ram Bhartiya respondent No. 2 will stand. We declare that no corrupt or illegal practice has been proved against any respondent.

Sri Sheo Kumar Pande respondent No. 1 shall pay the petitioner Rs. 1,000 as costs. All the respondents will bear their own costs. The petitioner is entitled to obtain a refund of his security deposit of Rs. 1,000.

(Sd.) V. G. OAK, I.C.S.,—*Chairman.*

(Sd.) N. N. MUKERJI—*Member.*

The 15th December, 1953.

(Sd.) BABU RAM AVASTHI—*Member.*

ANNEXURE "A"

ELECTION PETITION No. 316 of 1952

ORDER

In this election petition the petitioner seeks for a declaration that, the election of respondent Nos. 1 and 2 is void. Respondent Nos. 1 and 2 in their written statements have pleaded that, the election petition is not in proper form, that it contravenes section 81 Representation of People Act 1951, that the petition is vague and the petition is consequently liable to be rejected. On these pleadings the following two issues, among others, were framed:

1. Is the election petition not in a proper form? Is it in contravention of section 81 R. P. Act? Is it liable to be rejected?
6. Is the election petition vague and liable to be rejected?

Findings

Issue No. 1.—No form for an election petition has been prescribed. Section 83 of the Act deals with presentation of the petition. The Election Commission has transmitted the petition to this Tribunal for disposal. So apparently the Election Commission was satisfied that, the presentation of the petition was proper, section 83 (2) of the Act prescribes a list of corrupt or illegal practices to be attached to an election petition. In the present case we do not find any such list attached to the petition, although there is in the petition at least one charge of a corrupt practice. However, there is no specific plea in the written statements that, the petition is defective for lack of the list prescribed in section 83 (2). So we may ignore this defect in the petition assuming that there is such a defect in the petition. We decide that the election petition is in order, and does not contravene section 81 R. P. Act. It is not liable to be rejected on this ground.

Issue No. 6.—We have gone through the election petition. It is quite intelligible. We were able to strike issues after examining the pleadings of the parties. If the petition is vague on any particular point, the respondents may raise the question at the time of production of evidence. The petition cannot be thrown out at this preliminary stage. We hold that the election petition is not vague, and is not liable to be rejected on the ground of alleged vagueness.

(Sd.) V. G. OAK, I.C.S.,—*Chairman.*

(Sd.) N. N. MUKERJI—*Member.*

(Sd.) B. R. AVASTHI—*Member.*

The 16th October, 1952.

APPENDIX "B"

ELECTION PETITION No. 316 OF 1952

ORDER

This is an Election Petition by Shri Salig Ram Jaiswal challenging the election of Shri Sheo Kumar Pande respondent No. 1 and Shri Sukhi Ram Bhartiya respondent No. 2. The election related to Uttar Pradesh Legislative Assembly from Sirathu-Manjhanpur Constituency in Allahabad District. This was a double-member constituency, in which one seat was reserved for a scheduled caste candidate. The petitioner was a candidate for the general seat. Shri Sukhi Ram Bhartiya respondent No. 2 and respondent No. 10 were candidates for the reserved seats. Respondents Nos. 1 and 2 were declared elected. The petitioner now prays that the petitioner and respondent No. 10 may be declared as duly elected in place of respondents Nos. 1 and 2 respectively. Respondents 1 and 2 filed written statements. Various pleas were raised in defence. Respondent No. 1 raised the plea that, Shri Ganga Prasad was a duly nominated candidate. But the petitioner did not implead him as a party to this election petition. So the petition is liable to be rejected. Respondent No. 2 raised the plea that, he was a scheduled caste candidate, and that the petitioner has no right to claim a relief of declaration in favour of respondent No. 10 against respondent No. 2. On these pleas the following two issues were framed:—

2. Was Shri Ganga Prasad a duly nominated candidate? Is he a necessary party to this election petition? If so, what is its effect?
7. Is the petitioner entitled to challenge the election of respondent No. 2 (a scheduled caste candidate)?

Findings

Issue No. 2.—It is common ground that, Shri Ganga Prasad was nominated as a candidate, and that he withdrew from candidature within the prescribed time. The question for consideration is whether under these circumstances it was necessary to implead Shri Ganga Prasad in the election petition. Section 82 of Representation of the People Act 1951 deals with parties to the petition. Section 82 states:—"A petitioner shall join as respondent to his petition all the candidates who were duly nominated at the election other than himself, if he was so nominated". Shri Ganga Prasad was at one stage nominated as a candidate for election. The question arises whether, in spite of his subsequent withdrawal from the election, he is to be deemed to have been duly nominated at the election for purpose of section 82 of the Act. To answer this question it is necessary to examine the process of nomination in some detail.

Section 32 of the Act deals with the nomination of candidates for election. Section 33 refers to presentation of nomination papers and requirements for valid nomination. Nominations are scrutinised under section 36. Section 37 provides for withdrawal of candidature. Section 38 relates to publication of nominations. Section 38 states: "The Returning Officer shall, immediately after the expiry of the period within which candidature may be withdrawn under sub-section (1) of section 37, prepare and publish a list of valid nominations in such manner as may be prescribed". It will be seen that the Returning Officer has to prepare a list of valid nominations after excluding the nominations which have been rejected under section 36 or withdrawn under section 37. Section 38 marks a distinct stage in the process of nominations. When the Returning Officer publishes the list of valid nominations under section 38, everybody knows who the contesting candidates are. Obviously, if a nomination has been rejected under section 36, the person cannot be deemed to be a duly nominated candidate. The learned counsel for respondents found it difficult to state at what stage a candidate becomes a duly nominated candidate. It seems to us that, a candidate is to be deemed to be duly nominated, when his name appears in the list of valid nominations published under section 38.

Section 82 of the Act appears in Part VI. Section 79 occurring in Part VI contains some definitions. Section 2 of the Act also contains a few definitions. The terms "Candidate" and "Returned candidate" have been defined in section 79. But the expression "duly nominated" has not been defined either in section 2 or in section 79. It, therefore, appears that, the expression "duly nominated" has been used in section 82 in its popular sense. When a candidate withdraws his candidature under section 37, he is no longer actively interested in the election. His position is no better than that of an ordinary voter. The object of impleading a person to a proceeding is to give him a chance to oppose the proceeding if he cares. It is not practicable to implead all the voters to an election petition. An election petition is published under section 90 of the Act. Such publication is sufficient notice to the general public including voters and candidates, who have withdrawn under section 37. It seems to us, that, a candidate who has withdrawn his candidature within the prescribed time under section 37, cannot be looked upon as a duly nominated candidate. We hold that Shri Ganga Prasad was not a duly nominated candidate. So he was not a necessary party to this election petition.

The petitioner impleaded three persons, Shri Mewa Lal, Shri Jagdish Narain and Shri Prem Chandra as respondents Nos. 11, 12 and 13 in the election petition. It is admitted that these three persons were nominated as candidates, but they withdrew their candidature within the prescribed time. It was urged by the learned counsel for respondents that, the fact that Shri Mewa Lal and others were impleaded as parties to the election petition shows that such candidates are necessary parties to an election petition. It is true that Shri Mewa Lal and Shri Ganga Prasad were in the same position, that Shri Mewa Lal was impleaded in the petition, and Shri Ganga Prasad was not so impleaded. The question raised under this issue is a matter of some difficulty. That seems to be the reason why the petitioner impleaded Shri Mewa Lal and others in the petition as a matter of caution. We have pointed out that, such candidates are not to be treated as duly nominated candidates. Impleading unnecessary parties is not a serious defect in the proceedings. We decided issue No. 2 against the respondents.

Issue No. 7.—It is to be noted that the petitioner and respondent No. 1 were candidates for the general seat, whereas respondents Nos. 2 and 10 were candidates for the reserved seat. The question has been raised whether the petitioner, who was a candidate for the general seat, is entitled to challenge the election of respondent No. 2 for the reserved seat. It is to be noted that the election in question related to Sirathu-Manjhanpur Constituency, which is a double-member constituency.

Section 81 of the Act deals with presentation of petitions. Section 81 (1) states "An election petition calling in question any election may be presentedby any candidate at such an election or any elector.....". This section recognises two classes of persons, who are competent to file an election petition. A petitioner must be either a candidate at such an election or an elector. The petitioner gave the statement that, he is a voter in Allahabad (City) Constituency, but is not a voter in Sirathu-Manjhanpur Constituency. Hence the petitioner was not entitled to present the election petition as an elector. We have to see whether he was entitled to present the petition as a candidate.

Section 54 of the Act deals with special procedure at elections in constituencies where seats are reserved for scheduled castes. The illustration contained in section 54 shows that, the votes for the reserved seat may affect the result of election from the general seat. The returns for the two seats cannot be treated as two separate elections. Although the petitioner was not a candidate for the reserved seat, the petitioner and respondents Nos. 1 and 2 and 10 have all to be considered as candidates for this election. The petitioner's case is covered by the expression "any candidate at such election" used in section 81. We, therefore, decide that, the petitioner is entitled to challenge the election of respondent No. 2, who was a scheduled caste candidate.

(Sd.) V. G. OAK, I.C.S.—*Chairman.*

(Sd.) N. N. MUKERJI—*Member.*

(Sd.) B. R. AVASTHI—*Member.*

The 13th November, 1952

[No. 19/316/52-Elec.III/9050.]

By Order,

P. R. KRISHNAMURTHY, Assit. Secy.

